RSC Republican Study Committee

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Legislative Bulletin…………………………….………April 25, 2007

Contents:

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: Several

Total Cost of Discretionary Authorizations: $2.6 billion over 5 years

Effect on Revenue: $0

Total Change in Mandatory Spending: $0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of *Bills* Without Committee Reports: 0

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 1

H.R. 1332 — Small Business Lending Improvements Act of 2007 (*Bean, D-IL*)

Order of Business: The bill is scheduled for consideration on Wednesday, April 25, 2007, subject to a structured rule (H.Res. 330), which allows for four amendments.

Summary: H.R. 1332 would expand the two largest business finance programs conducted by the Small Business Administration (SBA), the 7(a) and 504 loan programs. The 7(a) program provides loan guarantees to approved banks and other lenders, and the CDC/504 loan program provides long-term, fixed-rate financing for major fixed assets for the purpose of encouraging economic development with a community. The specific provisions of the bill are as follows:

- Authorizes the SBA to offset borrower and lender fees collected on 7(a) loan programs. The committee report states the purpose is to reduce the "burden associated with borrower and lender fees" and make these loans "more affordable." The contribution (offset) would be commensurate with an appropriation, if made available, it must be fully used during the fiscal year, and adjusted quarterly. The provision provides the SBA broad discretion in determining the recipient and amount of the offset, and as such, it is unclear which borrowers would be provided this government offset on their government loan.

- **Creates a new rural lending outreach program**, which would provide up to an 85 percent guaranty for loans up to $250,000. Requires that the program only be carried out through rural area lenders, and sets certain requirements on approving and processing the loans.
- **Creates a new Community Express Program** under the SBA's 7(a) program for loans up to $250,000. Loans may be provided under this program only under the following conditions:
  - loans are provided to businesses that are majority owned by woman, socially disadvantaged individuals (as defined by the SBA), or military veterans;
  - loans are provided to businesses that are located in low or moderate income areas;
  - for loans of $25,000 or less, no collateral will be required; and
  - the SBA must approve or disapprove the loan within 36 hours.
- **Creates a new SBA loan program** termed the Medical Professionals in Designated Shortage Areas Program, and applies the following restrictions to loans under this program:
  - must be made to a business that provides properly licensed medical, dental, or psychiatric services to the public;
  - must be provided for the purpose of opening a business in a health professional shortage area (as defined in 42 USC 254e);
  - requires the SBA to provide 90 percent of the outstanding financing balance at the time of loan disbursement; and
  - reduces the associated fees by half for this program otherwise required by law.
- **Creates a new SBA loan program** termed the Increased Veteran Participation Program, and applies the following restrictions to loans under this program:
  - must be made to businesses that are majority owned by U.S. military veterans;
  - requires the SBA to provide 90 percent of the outstanding financing balance at the time of loan disbursement; and
  - eliminates the associated fees for this program otherwise required by law
- Applies the same standard for determining small business loan eligibility under the 7(a) program for alternative size standard loans as the SBA currently applies for other loans (as described in section 121.301(b) of title 13, Code of Federal Regulations). Per the committee report, the stated purpose of this provision is to simply toe standard in determining loan eligibility.
- Requires the SBA to administer a program to provide support to regional offices of the SBA in recruiting small lenders currently not participating in the 7(a) program to begin participating in this program.
- Defines "certified development company" to mean an entity incorporated under state law with the authority to promote and assist small business growth and development in certain areas determined and authorized by the SBA.
- Allows a development company (CDC) to issue debentures (a long-term debt instrument that is not secured by a specific asset) so long as it meets the following criteria:
  - CDCs must be a small concern with less than 500 employees and not under the control of another entity which does not meet the SBA's size standards for a small

business (except for those companies that were certified by the SBA prior to December 31, 2005, which may continue to issue debentures);
- CDCs primary purpose must be to benefit the community by fostering economic development to create and preserve jobs and stimulate private investment;
- CDCs must be a non-profit corporation (except for those development companies that were certified by the SBA prior to January 1, 1987);
- CDCs must be in good standing within its state of incorporation (and other states in which it does business), and in compliance with all applicable laws;
- CDCs must have at least 25 members, none of whom may own or control more than 10 percent of the company's voting membership, *consisting of representation from each of the following groups*: government organizations involved in economic development, financial institutions that provide commercial long-term fixed asset financing, community organizations involved in economic development, and businesses;
- CDCs must have a board of directors that a) is elected from the membership by the members, b) represents at least three of the four groups listed above, and c) meets on a regular basis to make policy decisions; and
- CDCs must have full-time professional management staff qualified to market the Certified Development Company Economic Development Loan Program, among several other requirements and restrictions.

➢ Amends the definition of a "rural area" to include any area other than a) a city or town that has a population greater than 50,000 inhabitants, and b) the urbanized area contiguous and adjacent to any such city or town.
➢ Modifies the SBA's 504 loan program to designate financing in areas eligible for investment under the New Markets Tax Credit Program as a public policy goal under the 504 program.
➢ Modifies the current terms under which SBA determines whether or not a business is minority owned. Specifically, this provision states that a business (or company's stock) owned by more than one individual is qualified to receive loan assistance (by being deemed a public policy goal under current regulations) if the combined ownership share of at least 51 percent is held by individuals who are minorities, women or veterans.
➢ Permits SBA borrowers to refinance a limited amount of existing debt secured by a current mortgage on the property being expanded by the 504 project, with certain other restrictions.
➢ Requires CDCs to either foreclose and liquidate defaulted loans that it made or to contract with a qualified third-party to do so. SBA must reimburse a CDC for all incurred expenses by that CDC, so long as the expenses were approved by the SBA in advance or were "reasonable and appropriate."
➢ Allows the SBA to provide financing to borrowers under the 504 program to borrow the maximum amount provided for, in addition to obtaining a loan guarantee under the 7(a) program to the maximum amount provided for.
➢ Allows energy efficiency projects that reduce the borrower's energy consumption by at least 10 percent to qualify as a public policy goal under the 504 program (which secures loan eligibility under this program) and to qualify the entity for the $4 million debenture.

- ➢ Extends through FY 2008 current law that permits a) CDCs to base their loan loss reserves on the outstanding balance of debentures, and b) CDCs to use an alternative risk-based methodology to calculate their loan loss reserves.

Additional Background: The SBA was originally established in 1953, and has been subsequently expanded and reauthorized numerous times in the last four decades, most recently within the 2005 Consolidated Appropriations Act (H.R. 4818; P.L. 108-447) in the 108th Congress. For additional information about the creation and history of the Small Business Administration, please visit the SBA website. For additional information that is critical of the current role and usefulness of the SBA loan program, please visit the American Enterprise Institute website.

Possible Conservative Concerns: As described above, the bill significantly expands SBA loan programs, creates several new programs, and makes some temporary programs permanent. Some conservatives may be concerned by the scope of these expansions and additions which further engage the federal government in lending to the private sector. The very nature of many SBA loan programs is to target (by setting preconditions for qualifying for certain loans) certain groups for preferential loan packages and options, thus picking "winners and losers" in the private market, instead of allowing market forces (i.e. – the most qualified candidates based on their business plan, market, and needs) to determine the most appropriate beneficiary of limited resources and funds. Further, some conservatives argue that the current SBA loan programs are duplicative of private-sector efforts and opportunities and are counterproductive to fostering competitiveness, growth, and ingenuity in U.S. small businesses.

Amendments: Below are the summaries of the four amendments made in order under the rule (H.Res. 330). The rule provides for one hour of debate and waives all points of order against the bill (except for clauses 9 and 10 of Rule XXI: for PAYGO and earmarks/limited tax benefits). Note: Summaries are based on RSC staff's review of actual amendment text.

1. *Matheson (D-UT)*. Adds "members of reserve components of the armed forces" as eligible to receive loans under the Community Express Program and the Increased Veteran Participation Program. (Debatable for 10 minutes)

2. *Matheson (D-UT)*. Adds "members of qualified Indian tribes" as eligible to participate in the Community Express Program. (10 minutes)

3. *Cuellar (D-TX)*. Allows rural small business owners, who do not have a rural lender located within 30 miles of their principal place of business, to be eligible for the Rural Lending Outreach Program loans issued by any lender enrolled in the 7(a) loan program. (10 minutes)

4. *Inslee (D-WA)*. Adds an additional public policy goal to the Small Business Lending program (section 504) to increase the use of sustainable design or low-impact design to produce buildings that reduce carbon-emissions and environmental impact. (10 minutes)

<u>Committee Action</u>: H.R. 1332 was introduced on March 6, 2007, and referred to the Committee on Small Business, which considered and reported (amended) to the House by (voice vote / unanimous consent) on April 20th (House Report 110-104).

<u>Administration Policy</u>: According to the Statement of Administration Policy (SAP) released for H.R. 1332, the Administration does not support this bill in its current form. The SAP stated, in part, that: "The Administration therefore cannot support House passage of H.R. 1332 unless it is amended to delete provisions that would increase these subsidies and the need for appropriations and/or increased fees on other loan applicants. ***H.R. 1332 could potentially reverse [recent SBA successes] by reintroducing or increasing taxpayer-funded subsidies for small business loan programs***." (emphasis added)

<u>Cost to Taxpayers</u>: According to CBO, H.R. 1332 will authorize $486 millon in FY08, and $2.565 billion over the FY08-FY12 period.

<u>Does the Bill Expand the Size and Scope of the Federal Government?</u>: Yes, as noted above, the bill expands several programs administered by the SBA and creates several new programs and positions.

<u>Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?</u>: No.

<u>Constitutional Authority</u>: The 1332 Committee, in House Report 110-104, cites constitutional authority in Article I, Section 8, Clause 18 (the congressional power to make all laws necessary and proper for carrying into execution the foregoing powers listed in the Constitution), but fails to cite a foregoing power of authority.

House Rule XIII, Section 3(d)(1), requires that all committee reports contain "a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution." *[emphasis added]*

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